

EXAMPLE CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this **date** day of **month, year**, by and between **city or county of ?**, from now on referred to as the LPA, and **consultant's firm name**, from now on referred to as the Consultant, whose principal office is located at **consultant's address including street and mailing address**.

The Montana Department of Transportation, herein referred to as "MDT", has approved the proposed LPA's enhancement project funded under Montana's federal-aid Community Transportation Enhancement Program (CTEP).

The LPA desires to employ the Consultant to furnish certain specific services of an **engineering or architectural** nature. The Consultant agrees to provide such services in accordance with the conditions provided and to carry out all the duties and obligations imposed by the Agreement. The Consultant agrees to provide the LPA with project development and design for federal-aid project **STPE ##(##)**, **Project name as shown on Project Specific Agreement**, Control Number **####**, located **describe location with project limits**.

This project will involve **insert description from the Project Specific Agreement (PSA) enter in the description of project. Modify as necessary to explain briefly what is anticipated**.

The Consultant may obtain copies of all manuals, guidelines, and other MDT documents from MDT's Community Transportation Enhancements Program Office. Consultant may be charged for copies of documents.

ARTICLE I SCOPE OF WORK

SECTION 1 - STANDARD OF CARE

The Consultant's performance on all services, obligations, and responsibilities under this Agreement will be in a manner that is consistent with that degree of care and skill ordinarily exercised by members of the **engineering or architectural** profession currently practicing under similar circumstances.

SECTION 2 - GENERAL

The Consultant, in performance of all work called for under this Agreement, will furnish all services for **preliminary engineering and construction engineering**. Called for in the specific project scope outlined in Section 4 of this Article.

The Consultant **will or will not** assist the LPA in the advertisement and award of the construction contract.

SECTION 3 - PROJECT DEVELOPMENT AND DESIGN

The Consultant will develop the project, conduct all necessary surveys, evaluations, environmental research and documentation and analyses, perform designs, and prepare project manuals for a transportation enhancement project.

Development of the Project will be in accordance with MDT's CTEP Guidelines. The Consultant's work will be performed in accordance with the most current version of the following books or manuals, as applicable.

MDT CTEP Guidelines
Appendix CTEP Guidelines of CSA
Montana Road Design Manual
Montana Bridge Design Manual
Hydraulics Manual
Survey Manual
Right-of-Way Manual
Traffic Manual
Construction Manual
AASHTO Standard Specifications for Highway Bridges
Montana Detailed Drawings
Project Development Procedures
Montana Standard Specifications for Road and Bridge Construction
Consultant Users Manual & Activity Descriptions
Manual on Uniform Traffic Control Devices (MUTCD)
American Society for Testing and Materials (ASTM)
Montana Materials Manual of Test Procedures
MDT CADD Standards Manual
Approach Standards for Montana Highways
Public Involvement Handbook
AASHTO Guide for the Development of Bicycle Facilities
AASHTO Guide Specification for Design of Pedestrian Bridges
Montana Public Works Standard Specifications

SECTION 4 – SPECIFIC PROJECT SCOPE

Enter the detailed scope of work for this Agreement include specific tasks. This section may refer back to exhibit E where a detailed scope of work with a project schedule may be listed.

SECTION 5 - REPORTS

- A. The Consultant will prepare the minutes for all meetings involved with the Project and will provide a copy of each to the LPA. The following formal reports will also be required:
 - 1. ***Include a list of all reports that will be required from the consultant***
- B. The Consultant will identify and justify all exceptions to design standards (see Art. I, Sec. 3) that are found to be necessary during the design of the Project. The justification must include economic analysis. The Consultant will submit a Design Exception Request to the LPA for approval by the MDT.

SECTION 6 - OBLIGATIONS OF THE LPA TO THE CONSULTANT

In addition to the obligations of the LPA to the Consultant listed elsewhere in this agreement, the LPA will:

- A. As far as possible cooperate with the Consultant in making necessary arrangements with public officials and with such individuals as the Consultant may need to contact for advice, counsel, and information.
- B. Provide timely approvals of the Consultant's formal submittals in writing in all instances. If verbal approvals are first given in the interest of progressing the work, such verbal approvals shall be confirmed in writing by the LPA at the earliest possible time.

- C. The LPA will provide the Consultant with any information needed by the Consultant for rendering the services required under this Agreement such information as is available to the LPA and the LPA's consultants and contractors. If materials prepared by the LPA or its consultants or contractors are incomplete or erroneous, the LPA will compensate the Consultant for any work required to correct them. Information generated by sources other than the LPA, MDT or their consultants or contractors may be utilized by the Consultant, but the LPA and MDT assumes no liability for its accuracy or completeness.
- D. Furnish copies of the LPA's existing as-built construction and right-and-way plans (as available).
- E. The LPA will not reuse or make or permit to be made any modifications to the Consultant's final design and drawings without the prior written authorization of the Consultant. The LPA shall make no claim against the Consultant arising from any unauthorized reuse or modification of the design and drawings.
- F. Give prompt written notice to the Consultant of any development that affects the scope or time of performance of the Consultant's services, or any defect or nonconformance in the Consultant's services or in the work of any subconsultant.

SECTION 7 - CONFERENCES, PROGRESS REPORTS, AND LIAISON

- A. Conferences will be held as necessary between representatives of the LPA and the Consultant to review and discuss progress and any matters pertinent to any phase of work. Additional compensation will not be made for those conferences.
- B. The Consultant will be responsible to and will report to ***name of LPA project manager***, for payment, submission of information, etc. All submittals will be made through ***name of Consultant Liaison***, who will be the Consultant's liaison.
- C. Requests for visits to the site or at the office of the Consultant may be made by the LPA, representatives of the MDT, Federal Highway Administration, or the Consultant in conjunction with any other party or parties for the purpose of review or inspection of the work.
- D. The Consultant will furnish to the LPA a brief narrative progress report on the first day of each month showing the status of the work on the Project. The report will cover all phases of work accomplished during the period of the report and show the percentage of work completed for each phase of the Project. Mention should be made of any matters that may have adversely affected the progress of the work.
- E. The Consultant, upon LPA's direction, will confer with public agencies, including planning authorities, giving consideration to suggestions and plans of such agencies.
- F. The Consultant will submit to the LPA the professional history, classification, and salary of each person to be assigned to the Project. The LPA will reserve the right to approve all such personnel and will so inform the Consultant of such approval in writing.

SECTION 8 - PERSONNEL

The Consultant must have in their employ a registered Professional ***Engineer or Architect*** in the State of Montana.

SECTION 9 - ENDORSEMENTS

The Consultant will furnish professional stamps, statements, or other suitable means to signify responsible endorsement of work.

ARTICLE II TIME OF BEGINNING AND COMPLETION

SECTION 1 - PROJECT COMPLETION TIME

- A. The Consultant agrees to start work on the professional services outlined in Article I of this Consultant Services Agreement within **ten (10)** days after receipt of written notice to proceed from the LPA.
- B. The mutually agreed to Project Schedule, Exhibit E, is made a part of this Agreement. Except as provided below, the Consultant must meet all deadlines and scheduled submittal dates. The Consultant will make reasonable efforts to improve on the schedule.
- C. **Except as provided below, all work as specified in Article I of this Agreement must be completed by (end date of Agreement month day, year).**
- D. If during the Project development, the Consultant becomes aware of circumstances that have or may have an adverse affect on the scheduled completion of any or all phases of the Project, or that the Consultant will be unable to meet any schedule deadlines or submittal dates, the consultant will immediately notify the LPA in writing. The LPA and the Consultant will together take the steps necessary to maintain the Project on schedule. The Project completion schedule will be adjusted only if necessary.
- E. The Consultant is not responsible for delays caused by factors beyond the Consultant's control, including delays because of strikes, lockouts, work slowdowns, or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the LPA to furnish timely information or approve or disapprove of the Consultant's services or work product promptly, or delays caused by faulty performance by the LPA.
- F. The Consultant submits the final contract plans package to the LPA and MDT for review. The Consultant will make any revisions to the plans that are required as a result of this review.
- G. Any alteration in the time schedule under Article II, Section 1C, shall be subject to the provisions of Article II, Section 2B.

SECTION 2 - CHANGES

- A. If additional work is requested by the LPA or delays beyond the control of the Consultant prevent completion of the services to be performed under this Agreement in the time specified, the LPA will grant an equitable adjustment of the Agreement amount and/or time for performance for all affected phases of the work. The Consultant shall provide a written request for an adjustment within **ten (10)** days from the date the Consultant receives notice of the reasons for the requested adjustment.

ARTICLE III PAYMENT

SECTION 1 - PAYMENT FOR SERVICES

This Agreement will be administered on a cost plus fixed fee basis. The salaries, overhead rate, salary additive rate, and other compensatory rates, as included in the Consultant's cost proposal (Exhibit "D"), will remain fixed for the duration of this Agreement. However, the Consultant may make written request to the LPA to make revisions to the above rates. The LPA may approve revisions if they are reasonable and justified.

SECTION 2 - DEFINITIONS

A. Payroll Costs

1. Payroll costs shall be defined as the actual salaries and payroll items of all personnel working on the Project. The LPA agrees to pay such actual payroll items as Social Security, Unemployment Compensation, excise and payroll taxes, employees' compensation insurance, sick leave, vacation, holiday pay and employees' retirement, employee medical and disability insurance, in addition to actual salaries. The LPA agrees to reimburse the Consultant for overtime at the rate of one and one-half (1½) times the hourly rate paid each employee. Requests for authorization of overtime will require prior written approval of the LPA.
2. Overtime is all hours worked in excess of forty (40) hours per week.
3. The hourly rate for salaried employees shall be determined from their annual salary divided by two thousand eighty (2080) hours.

B. General Administrative Overhead

General administrative overhead of the Consultant is applicable to the payroll costs described in Paragraph A. Payroll Costs. Such overhead may include, but not be limited to, the following: administrative, clerical, and unallocated labor; employee bonuses and incentive awards; general travel expenses; depreciation; dues and subscriptions; computer and equipment expense; equipment rental; freight; general business insurance; employee travel accident and life insurance; legal and accounting; office, drafting room, and laboratory supplies; professional society fees; recruiting; rent; building and equipment repairs and maintenance; taxes and licenses; telephone and telegraph (except toll charges specifically related to each individual project); general travel and employee relocation; utilities and janitorial services; and office miscellaneous expense. Specifically excluded are bad debts and interest on borrowed capital.

C. Out-of-Pocket and Subcontract Costs

1. Subcontractor charges directly related to the Project shall be reimbursed at cost. All subcontract costs shall require approval of the LPA.

D. Payment of Services

Payment will be made on the basis of and in accordance with the following schedules:

1. The Consultant will be reimbursed for the actual payroll costs as set forth in Article III, Section 2, Paragraph A, for the time such employees are directly utilized on work necessary to fulfill the terms of this Agreement. To this amount will be added the general administrative overhead costs as set forth in Article III, Section 2, Paragraph B.
2. The Consultant shall be reimbursed for actual out-of-pocket expenses and subcontract costs as specified in Article III, Section 2, Paragraph C.
3. The Consultant will be paid a fixed fee (profit) not to exceed **\$##,###.##, (amount written out) Dollars .**
4. The total payment to the Consultant (including payroll costs, out-of-pocket expenses, subcontract costs and fixed fee) for the work covered under this Agreement will not exceed **\$ ##,###.##, (amount written out) Dollars.**
5. All costs related to this project are to be in conformance with 48 CFR 31.2 of the Code of Federal Regulations.

E. Partial and Final Payments

Partial payments of the foregoing will be made at monthly intervals as the work progresses, based upon certified invoices received, compatible with current practices and acceptable to the LPA. Payments on the fixed fee will be based upon the estimated percentage of completion of work. **Every request for payment must include one original and (number of required copies) copies of the certified invoice, along with (number of required copies at least one) copies of the progress report.**

Whenever the Consultant completes the work in accordance with the terms of the Agreement, the LPA's Liaison will certify to the completion and recommend to the LPA that final acceptance be made. The LPA will notify the Consultant that acceptance has been made.

The LPA reserves the right to withhold payment of the Consultant's final payment until any and all just claims filed with the LPA against the Agreement have been settled. Accomplishment of an affidavit on the final claim by the Consultant shall constitute full Acceptance by the Consultant of the total amount shown as the entire amount due the Consultant under the agreement.

F. Consultant's Proposal & Cost Estimate

The attached Consultant's Proposal and Cost Estimate, Exhibit "D", by this reference is made a part of this Agreement. If this document conflicts with the Agreement, the Agreement will govern.

SECTION 3 - INSPECTION AND AUDIT

All books, papers, records, payrolls, vouchers, and invoices relating to costs and expenditures incurred as to the performance of the services specified in Article I by the Consultant or any of its subcontractors shall be made available to the LPA, MDT, the Legislative Auditor and Legislative Fiscal Analyst, the Federal Highway Administration or their authorized representatives, for audit and review, at the Consultant's respective offices, at all reasonable times during the Agreement period and for three years from the date of final MDT payment.

SECTION 4 - TYPE OF CONTRACT

The Consultant agrees that this is a Consultant Services Agreement and that the Consultant is an independent contractor and not an employee of the LPA or MDT. It is further understood by the Consultant that no deductions from the payments under this Agreement for federal or state income tax, FICA (social security), retirement, or other reasons will be withheld by the LPA or MDT.

**ARTICLE IV
MISCELLANEOUS PROVISIONS**

SECTION 1 - TERMINATION OR ABANDONMENT

The LPA may terminate this Agreement at any time upon **fifteen (15)** days written notice to the Consultant, for any of the following:

- A. Due to unforeseen circumstances it is possible that it could be in the best public interest to abandon, reduce, or change the Project covered by this Agreement. If the LPA believes that is appropriate, this Consultant Agreement will be terminated.
- B. Due to adverse weather, flood, earthquake, etc., or any other condition or conditions beyond the control of the LPA and/or Consultant, which may adversely affect the work to be performed, this Agreement may be terminated by the LPA.
- C. Due to a change in the scope, character, or complexity of all or any part of the work under this Agreement, the LPA may decide that it is in the best public interest to terminate this Agreement.
- D. Should the services of the Consultant prove unsatisfactory or because of the failure of the Consultant to perform its work with due diligence or to complete the required services or any part of it within the time limits specified, this Agreement may be terminated.

In any such case, however, the Consultant shall be paid the reasonable value of such services rendered up to the time of termination. The reasonable value of such services shall be based on the method of payment as defined in the Agreement. The approved percentage of completion will be determined by mutual agreement between the LPA and the Consultant.

SECTION 2 - GENERAL COMPLIANCE WITH LAWS

- A. The Consultant will observe and comply with existing laws, ordinances, and regulations.
- B. The Consultant agrees to indemnify and hold harmless the LPA, state and MDT, their officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, demands, and causes of action of any kind or character (including reasonable attorneys fees and costs of defense), to the extent caused by the Consultant's non-negligent/ negligent but wrongful acts, errors, or omissions arising out of services performed, or in any way resulting from a non-negligent but wrongful act, error, or omission of the Consultant and/or its agents, employees, subcontractors, or its representatives under this Agreement.
- C. The LPA agrees to indemnify and hold harmless the Consultant from and against all claims, demands, and causes of action of any kind or character (including reasonable attorneys fees and costs of defense), to the extent caused by the LPA's non-negligent but wrongful acts, errors, or omissions arising out of services performed, or in any way resulting from a non-negligent/ negligent but wrongful act, error, or omission of the LPA and/or its agents or employees under this agreement.
- C. Furnish copies of the LTG's existing as-built construction and right-and-way plans (as available).
- D. The LTG will not reuse or make or permit to be made any modifications to the Consultant's final design and drawings without the prior written authorization of the Consultant. The LTG shall make no claim against the Consultant arising from any unauthorized reuse or modification of the design and drawings.

SECTION 3 - OWNERSHIP OF DOCUMENTS

Upon completion of services or termination of this Agreement, all drawings, map originals, survey notes, field books, calculations, reports, and all data used will become the property of the LPA.

Following the LPA's acceptance of such documents, the Consultant will be indemnified, defended, and held harmless only for any changes or revisions to the plans and related documents that the Consultant prepares under this Agreement that are made without Consultant's knowledge and written consent.

SECTION 4 - SUBCONTRACTING, ASSIGNMENT OR TRANSFER

The subcontracting, assignment, or transfer of any part of this Agreement, except as shown in the Consultant's proposal, is prohibited unless prior written approval is obtained from the LPA.

Subcontracts that exceed \$10,000 in cost will contain all required provisions of the prime agreement.

SECTION 5 - CHANGES OF WORK

If, during the term of the Agreement, additional services are required, other than those services specified above, or major changes in the work become necessary or desirable, the LPA may make written request to the Consultant to perform such services or make such changes. If the Consultant is of the opinion that any work he has been requested to perform is beyond the scope of this Agreement and constitutes extra work, the Consultant will promptly notify the LPA in writing prior to performing such work. If the LPA agrees that such work does constitute extra work, the Consultant shall be reimbursed on a mutually agreed basis, and additional time for completion of the Agreement shall be given. Before such work is undertaken, the Consultant and the LPA will, by mutual written agreement, determine the scope of the work and the cost thereof.

Compensation will be determined before the operations begin and as soon as circumstances permit. If a mutual agreement is not reached in negotiations for an increase in such work, the LPA will use other methods to accomplish the work.

SECTION 6 - MEETINGS AND PRESENTATIONS

The Consultant and its subcontractors, when directed by the LPA, will attend and make appropriate presentations at meetings conducted for the purpose of discussing with the public or local, state, and federal officials the effect and objectives of the proposed project or other matters pertaining to the Project.

The Consultant will prepare exhibits and visual aids necessary to clarify the proposed project to the participants of the meetings.

SECTION 7 - ACCURACY OF WORK

The Consultant will make necessary revisions or corrections resulting from errors and omissions on the part of the Consultant without additional compensation (see Art.I, Sec.1).

If any errors are made by the Consultant in any phase of its work under this Agreement that may require additional field or office work, the Consultant will be promptly notified in writing and will be required to perform such additional work as may be necessary to correct these errors without undue delay and without additional cost to the LPA. Acceptance of its work will not relieve the Consultant of the responsibility for subsequent correction of any such errors and the clarification of any known ambiguities.

Construction problems or conflicts arising as a result of design or plan errors or omissions will be considered the Consultant's responsibility. The LPA will be responsible for any unreasonable interpretation it makes of the Consultant's design, drawings, and plans. The Consultant will be notified of all such errors and omissions and will meet with LPA representatives to assist in determining corrective action at no cost to the LPA. If design errors are found to be a cause of the construction problem or conflict, the Consultant will have the opportunity to be involved in discussions to determine the desired corrective action. Following discussions between the LPA and the Consultant, the LPA will provide the Consultant with its written demand letter for the total costs of the corrective action.

The Consultant agrees to provide proof of errors and omissions insurance coverage not less than \$1,000,000 (One-Million Dollars) for the entire period of the Project for which consultant services are required under this Agreement.

SECTION 8 - VENUE

In the event of litigation, venue shall be the **(number of the Judicial District)** Judicial District in and for the County of **(name of county)**, State of Montana, and the Agreement shall be interpreted according to the laws of Montana.

SECTION 9 - NONDISCRIMINATION

Reference is made to Exhibit "C," which by this reference is hereby made a part of this Agreement.

SECTION 10 - CERTIFICATION

The parties to this Agreement have each executed a certification. The certification of the Consultant, labeled Exhibit "A," is attached and by this reference made a part of this Agreement. The certification of the LPA, labeled Exhibit "B," is attached and by this reference made a part of this Agreement.

SECTION 11 - DBE GOAL

The Consultant will make all reasonable efforts to utilize MDT's currently certified DBE firms for applicable subcontracting services that are necessary. The Appendix CTEP Guidelines of CSA contains instructions for accessing the current Internet listing of MDT's certified DBE firms.

Darren Kaihlanen, Compliance Specialist should be contacted at (406) 444-9229, should subcontracting opportunities arise.

Each invoice submitted in accordance with Article III, Section 2E, must state the established DBE goal for the project and the current and cumulative amounts expended to date towards that goal.

SECTION 12 - WORKER'S COMPENSATION COVERAGE

The Consultant agrees to provide proof that he has a policy for Worker's Compensation Insurance or proof that he has elected to be exempt from such coverage and his election has been approved by the Department of Labor and Industry. The Consultant agrees to maintain Worker's Compensation Coverage or be self insured for the entire period of this Agreement.

SECTION 13 - CONSULTANT'S PLANS RESPONSIBILITY

The Consultant will be responsible for the quality of the final plans package (see Art. I, Sec. 1), as the LPA will not make a detailed check of the plans. The Consultant will stamp and sign the title sheet of the final contract plans package. The Consultant's name will be shown on all plan sheets of the Project. If Specialty Plans are involved (for example, Bridge Plans, Sewer/Water Plans prepared for a city and included into the LPA's plan package, or similar plans), the Consultant will stamp and sign each page of the plans.

The final plans package will be assembled and shall take on the form of a Project Manual and drawings as defined in the CTEP Guidelines.

SECTION 14 - ENTIRE AGREEMENT & MODIFICATIONS

This Agreement, including the documents referenced or attached here, is the entire agreement of the parties. Any modification requires a written amendment signed by authorized representatives of both parties.

SECTION 15 – THIRD PARTY BENEFICIARIES

This Agreement is not intended to create anyone as a third party beneficiary or to authorize anyone not a party to the Agreement to maintain an action for damages pursuant to the terms or provisions of this Agreement.

SECTION 16 - CONFIDENTIALITY OF INFORMATION

The Consultant understands that the information contained in and created by this Agreement will be part of the public bidding process, and that it must remain confidential between the Consultant and the LPA until the Project has been awarded. Failure by the Consultant or its employees to keep that information confidential will be considered a breach of this Agreement, and may require the LPA to have another consultant rework the work product of this Agreement, potentially delaying the Project and costing the LPA additional funds. Such an act by the Consultant will be a violation of Art. IV, Sec. 2, and subject all persons or parties involved to possible debarment under ARM Sec. 18.d.101 *et seq.*

IN WITNESS, the parties involved have sealed this Agreement by their signatures.

APPROVED FOR
THE CONSULTANT

By: _____

Date: _____

By: _____

Date: _____

FEDERAL EMPLOYER'S I.D. NO.

APPROVED FOR
THE LPA

By: _____

Date: _____

ATTEST:

By:

Date:

ATTEST:

By: _____

Date: _____

APPROVED FOR LEGAL CONTENT

By: _____
LPA Legal Services

Date: _____